



Committee on Audit & Performance Revised

Wednesday, March 7, 2007

1:00 PM to 300 PM

Room 216 The Capitol

MEETING PACKET

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

(AMENDED 3/6/2007 2:03:56PM)

Amended(1)

Committee on Audit & Performance

Start Date and Time: Wednesday, March 07, 2007 01:00 pm

End Date and Time: Wednesday, March 07, 2007 03:00 pm

Location: 216 Capitol

Duration: 2.00 hrs

Consideration of the following bill(s):

HB 153 Ad Valorem Tax Data by Seiler

HB 271 Contracting for Efficiency or Conservation Measures by State Agencies by McKeel

HB 399 Procurement of Environmentally Preferable Cleaning Products by Lopez-Cantera

Workshop on the following:

Idea 77 - Energy Efficient Vehicles

NOTICE FINALIZED on 03/06/2007 14:03 by YOUNG.MARY

Committee Meeting Notice

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HB 417 State Integrated Electronic System for Deploying Government Products, Services, and Information by Scionti

Workshop on the following:

Idea 77 - Energy Efficient Vehicles

NOTICE FINALIZED on 03/05/2007 16:27 by YOUNG.MARY



The Florida House of Representatives

Government Efficiency & Accountability Council

Committee on Audit & Performance

**Marco Rubio
Speaker**

**Ed Homan
Chair**

AGENDA

March 7, 2007

1. CALL TO ORDER BY CHAIR.

2. Consideration of the following bill(s):

HB 153 – Ad Valorem Tax Data by Seiler

HB 271 – Contracting for Efficiency or Conservation Measures by State Agencies
by McKeel

HB 399 – Procurement of Environmentally Preferable cleaning Products by
Lopez-Cantera

HB 417 – State Integrated electronic system for Deploying Government
Products, Services, and Information by Scionti

3. Workshop on Idea 77, Energy Efficient Vehicles.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 153

Ad Valorem Tax Data

SPONSOR(S): Seiler

TIED BILLS:

IDEN./SIM. BILLS: SB 560

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Audit & Performance</u>	<u></u>	<u>Ferguson</u>	<u>De La Paz</u>
2) <u>Government Efficiency & Accountability Council</u>	<u></u>	<u></u>	<u></u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Currently, the Department of Revenue (DOR) is responsible for the research and tabulation of data and conditions existing as to ad valorem taxation. DOR must publish this data annually and make recommendations to the Legislature to ensure that property is valued according to its just value and is equitably taxed throughout the state.

HB 153 specifies that the data DOR is currently reporting must include:

- The annual percentage increase in total nonvoted ad valorem taxes levied by each city, county, and local taxing authority.
- Information on the distribution of ad valorem taxes levied among the various classifications of property.
- The previous year's adopted millage rate, the current year's millage rate, and the current percentage increase in taxes levied above the rolled-back rate.

HB 153 also requires this data to be published, at a minimum, on DOR's website and on the websites of all property appraisers.

HB 153 has an effective date of July 1, 2007.

See fiscal comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government--HB 153 increases the Department of Revenue's responsibility to report specific data regarding ad valorem taxation that it is not currently required to report.

B. EFFECT OF PROPOSED CHANGES:

Current situation

Section 195.052, F.S., requires the Department of Revenue (DOR) to conduct constant research and maintain accurate tabulations of data and conditions existing as to ad valorem taxation and to annually publish the data and make recommendations to the Legislature as necessary to ensure that property is valued according to its just value and is equitably taxed throughout the state.

Currently, DOR receives annual tax roll information from all Florida property appraisers as part of its function of overseeing the valuation of property. There are records for approximately 9 million real property parcels reported to DOR. Included on each parcel record is coding describing the type of property, its value, and recent sales information. From this data, DOR is able to describe the types and value of property for each county as a whole.

In addition to the tax roll data, DOR also receives the following:

- As part of a summary information sheet, property appraisers submit to DOR a listing of all taxes being levied in their county, the millage rate levied, and the taxable value levied against. This data, however, contains no information on the composition of property within the taxing jurisdiction.
- DOR also oversees the Truth in Millage (TRIM) setting process for all taxing jurisdictions. In this role, DOR receives rolled back rates and adopted millages from each taxing jurisdiction. Again, there is no indication of the property types within these jurisdictions.

Proposed Change

HB 153 specifies that the data DOR is currently reporting must include:

- The annual percentage increase in total nonvoted ad valorem taxes levied by each city, county, and local taxing authority.
- Information on the distribution of ad valorem taxes levied among the various classifications of property, including homestead, nonhomestead residential, new construction, commercial, and industrial properties.
- The previous year's adopted millage rate, the current year's millage rate, and the current percentage increase in taxes levied above the rolled-back rate.

In order for DOR to describe the tax distribution by type of property for each taxing jurisdiction as required by HB 153, property appraisers would have to include in the data submitted to DOR an indication of each taxing jurisdiction in which each parcel is located. This would require reprogramming on the part of both DOR and the property appraisers.

HB 153 also requires this data to be published, at a minimum, on DOR's website and on the websites of all property appraisers. The data currently required to be reported by DOR is published in the Florida Property Valuations and Tax Data Book.¹ Some property appraisers do not maintain a website.

¹<http://dor.myflorida.com/dor/property/databk.html>

C. SECTION DIRECTORY:

Section 1. Amends s. 195.052, F.S., to specify requirements for data to be published by the Department of Revenue.

Section 2. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

DOR estimates the physical impact of HB 153 will be \$200,000 (non-recurring) assuming that there is no additional requirement for website development. There should be no additional fiscal impact if HB 153 did not require information on distributions of taxes by property type to extend below the county level to include this amount of required detail to the individual taxing authorities. In any event, DOR would publish the additional data in a form such as the current Data Book since this current information is currently published in this format.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandate provision appears to apply because HB 153 will require the expenditure of money since the bill requires all property appraisers to publish data on their website; however, an exemption may apply (insignificant fiscal impact) if, as anticipated, the fiscal impact is estimated to be less than \$1.9 million.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

DOR has indicated the 60 day timeframe for publication is very short and that 120 day period would be easier to implement.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

HB 153

2007

1 A bill to be entitled
2 An act relating to ad valorem tax data; amending s.
3 195.052, F.S.; specifying requirements for data to be
4 published by the Department of Revenue; providing an
5 effective date.

6
7 Be It Enacted by the Legislature of the State of Florida:

8
9 Section 1. Section 195.052, Florida Statutes, is amended
10 to read:

11 195.052 Research and tabulation of data.--The department
12 shall conduct constant research and maintain accurate
13 tabulations of data and conditions existing as to ad valorem
14 taxation, shall annually publish such data as may be appropriate
15 to facilitate fiscal policymaking, and shall annually make such
16 recommendations to the Legislature as are necessary to ensure
17 that property is valued according to its just value and is
18 equitably taxed throughout the state. Such data shall include
19 the annual percentage increase in total nonvoted ad valorem
20 taxes levied by each city, county, and local taxing authority
21 and shall include information on the distribution of ad valorem
22 taxes levied among the various classifications of property,
23 including homestead, nonhomestead residential, new construction,
24 commercial, and industrial properties. Such data shall include
25 the previous year's adopted millage rate, the current year's
26 millage rate, and the current percentage increase in taxes
27 levied above the rolled-back rate. Such data shall be published,
28 at a minimum, on the department's website and on the websites of

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29 | all property appraisers of this state. Publication shall occur
30 | not later than 60 days after receipt of extended rolls for all
31 | counties pursuant to s. 193.122(7).

32 | Section 2. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 271
SPONSOR(S): McKeel
TIED BILLS:

Contracting for Efficiency or Conservation Measures by State Agencies
IDEN./SIM. BILLS: SB 1164

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Audit & Performance</u>	<u></u>	<u>Strickland</u>	<u>De La Paz</u>
2) <u>Government Efficiency & Accountability Council</u>	<u></u>	<u></u>	<u></u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 271 amends the Guaranteed Energy Performance Savings Contracting Act by expanding the authority of state agencies, municipalities, or political subdivisions to contract for water and wastewater efficiency and conservation measures. The Act currently permits agencies to enter into a guaranteed energy performance savings contracts merely based upon energy savings, under specified circumstances. Specifically, the bill makes the following changes to current statutory law:

- Adds conservation and efficiency measures for both water and wastewater to the Guaranteed Energy Performance Savings Contracting Act
- Adds water and wastewater efficiency and conservation measures to the types of guaranteed performance savings contracts that may be entered into by agencies.
- Expands the express list of conservation measures that may be contemplated.
- Adds water and wastewater efficiency and conservation measures to the law relating to consolidated financing of deferred-payment purchases, to conform to the changes in the bill.

The bill may have a positive fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Guaranteed Energy Performance Savings Contracting Act

In 1994, the Legislature enacted the Guaranteed Energy Savings Program,¹ later amended to become the Guaranteed Energy Performance Savings Contracting Act.² The program permits agencies, defined as “the state, a municipality, or a political subdivision,”³ to enter into a guaranteed energy performance savings contract, under specified circumstances.⁴

The purpose of a guaranteed energy savings contract is to allow a properly-licensed contractor to create or install energy conservation measures that will reduce the energy or operating costs of an agency facility. The Act contains a number of contract requirements to ensure that the measures will result in a savings to the agency over time, and to ensure that the contractor is financially liable for any failure to achieve such savings.

An “energy conservation measure” is a training program, facility alteration, or equipment purchase to be used in new construction, including an addition to an existing facility, which reduces energy or operating costs.⁵ Examples of such measures include insulation, storm windows and doors, automatic energy control systems, and cogeneration systems.

Current law requires that, before the installation of conservation measures, agencies obtain from a qualified provider a report that summarizes the costs of the conservation measures and provides the amount of cost savings.⁶ The qualified provider must be selected in compliance with s. 287.055, F.S., which provides for competitive bidding requirements for state agencies wanting to procure professional architectural, engineering, or surveying and mapping services.

A guaranteed energy performance contract must contain the following provisions:

- A written energy guarantee by the qualified provider that the energy or operating cost savings will meet or exceed the cost of energy conservation measures.
- A provision that all payments may be made over time, but may not exceed 20 years from the date of installation and acceptance by the agency.
- A requirement that the qualified provider provide a 100 percent project value bond to the state for its faithful performance, as required by s. 255.05, F.S.
- Provisions for an allocation of any excess savings among the parties.
- The qualified provider must provide an annual reconciliation of the cost savings and if there is a shortfall, the provider must be liable.
- A statement that the contract does not constitute a debt, liability, or obligation of the state.

¹ Ch. 94-112, L.O.F., codified at s. 489.145, F.S.

² Ch. 2001-81, L.O.F.

³ Section 489.145(3)(a), F.S.

⁴ See Section 489.145(4), F.S.

⁵ Section 489.145(3)(b), F.S.

⁶ Section 489.145(4), F.S.

Department of Management Services and The Office of the Chief Financial Officer have developed forms and related documents for use by state agencies and require the agencies to submit them to the Office of the Chief Financial Officer for its approval under the authority granted under s.489.145, F.S. These model documents are the audit agreement between the agency and the qualified provider, the financing agreement, and the performance contract.⁷

Water and Wastewater Conservation and Efficiency

The Florida Department of Environmental Protection (DEP), each of the state's water management districts, and the federal Environmental Protection Agency (EPA) has each established programs for the efficient use of and conservation of water and wastewater. According to the EPA, water efficiency continues to play an important role not only in protecting water sources and improving water quality, but also in reducing the amount of energy used to treat, pump and heat water – which currently accounts for approximately eight percent of U.S. energy demand.⁸ Further, the EPA reports that water use can have major environmental, public health, and economic benefits by helping to improve water quality, maintain aquatic ecosystems, and protecting drinking water sources.⁹ According to the EPA, the efficient use of water, through behavioral, operational, or equipment changes, if practiced broadly, can help mitigate the effects of drought.¹⁰

According to the DEP, protecting the amount and quality of our water resources and implementing efficient wastewater management practices is critical to maintaining sufficient and potable water for domestic, industrial, agricultural, and governmental use. Improperly disposing of wastewater can damage drinking water supply, wildlife, and other important environmental resources.¹¹

Effect of Proposed Changes

The bill expands the scope of the Act beyond energy conservation to include water and wastewater conservation and efficiency.

The bill adds the following measures to the list of measures within the current definition of an “energy conservation measure:”

- Equipment upgrades that improve the accuracy of billable revenue generating systems.
- Automated electronic or remotely controlled systems or measures that reduce direct personnel costs.
- Such other energy, water, or wastewater efficiency or conservation measures as may provide measurable, long-term operating cost reductions or billable revenue increases.
- Cool roof coating.¹²

The bill provides that the report that is currently required to be submitted to the agency from the performance savings contractor prior to the design and installation of conservation measures, must include a summary of the costs associated with “operational improvements” if such improvements are the basis for the proposed cost savings.

The bill removes the word “energy” from the section heading of s. 489.145, F.S., and changes the short title to the “Guaranteed Performance Savings Contracting Act,” in order to better reflect the additional scope of the act. Similar conforming changes are made throughout the bill. “Water and wastewater” are

⁷ Interview of Clint Sibille of Department of Management Services, February 23, 2007

⁸ EPA Promotes Water Efficiency in the Home (http://www.epa.gov/water/water_efficiency.html)

⁹ Frequently Asked Questions About Wastewater Management (<http://www.epa.gov/owm/faqall.htm>)

¹⁰ Using Water Efficiently: Ideas for Communities (<http://www.epa.gov/watersense/pubs/comm.htm>)

¹¹ Domestic Wastewater (<http://www.dep.state.fl.us/water/wastewater/dom/index.htm>)

¹² According to the EPA a "cool roof" is a roofing material that has high solar reflectance, typically resulting in a release of a large percentage of absorbed heat. This keeps the material cooler and helps to reduce the heat island effect. Heat Island Effect (<http://www.epa.gov/heatisland/strategies/index.html>)

rgy” as the objects of the contracting process, and “efficiency” is added to “conservation” of measures contemplated.

The bill revises definitions to include the qualifying activity and tasks of “retrofitting or adding to existing facilities or infrastructure,” which was previously identified to include only “new construction” or “additions” to existing facilities. This would extend the range of impact of s. 489.145, F.S. from only new construction or additions, to all existing facilities owned by the state.

The bill amends s. 287.064, F.S. (addressing the consolidated financing of deferred payment purchases) to conform with the changes proposed by this bill by adding “water and wastewater efficiency” to the section within a reference to s. 489.145, F.S. Currently, s. 287.064, F.S. includes the cost of energy conservation measures, and not that of water or wastewater efficiency, as a cost that may be financed pursuant to a master equipment financing agreement.

C. SECTION DIRECTORY:

Section 1. Amends s. 489.145, F.S., adding “water and wastewater efficiency” to the scope of the re-titled “Guaranteed Performance Savings Contracting Act,” and adding additional measures to those permitted to achieve conservation and efficiency in energy, water, and wastewater use.

Section 2. Amends s. 287.064, F.S., adding “water and wastewater efficiency” to the statute addressing consolidated financing of deferred payment purchases.

Section 3. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Companies that provide energy, water, or wastewater conservation consulting or equipment may have increased business opportunities.

D. FISCAL COMMENTS:

The bill provides an opportunity for agencies to reduce energy, water, and wastewater costs by increasing conservation and efficiency. If the contractor’s initial analysis is favorable and conservation measures are installed, the resulting savings are guaranteed by the contractor, pursuant to statute.

The bill should have the effect of creating an incentive for agencies to procure guaranteed performance savings contracts and for contractors to maximize the potential savings.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

A concern has been raised relating to the numerous deletions of the word “energy” in s. 489.145, F.S., making the statute’s title a nonspecific reference as to the type of contract the statute addresses.

The Department of Management Services (DMS) has voiced concern that the proposed changes in HB 271 would cause their Purchasing Program to amend, bid, or re-bid existing contracts to secure the services of guaranteed performance savings contractors for the additional water or wastewater efficiency and conservation services. A re-procurement process may affect agencies if there is disruption to services that are currently offered under existing contracts.

D. STATEMENT OF THE SPONSOR

This bill expands an already existing energy efficiency program to include water and wastewater. The existing Guaranteed Energy Performance Savings Contracting Act has been extremely successful in improving the efficiency of state, local and other governmental buildings. Rather than taxpayer dollars, retrofit and other conservation and efficiency measures are financed by a private sector contractor who performs the work, assumes all of the risk and who is compensated with a maximum twenty year payout only when actual efficiency savings result from the project.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

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1 A bill to be entitled
2 An act relating to contracting for efficiency or
3 conservation measures by state agencies; amending s.
4 489.145, F.S.; including water and wastewater efficiency
5 and conservation in the measures encouraged by the
6 Legislature; revising definitions; providing for inclusion
7 of water and wastewater efficiency and conservation
8 measures in guaranteed performance savings contracts
9 entered into by state agencies, municipalities, or
10 political subdivisions; amending s. 287.064, F.S.,
11 relating to consolidated financing of deferred-payment
12 purchases, to conform; providing an effective date.
13

14 Be It Enacted by the Legislature of the State of Florida:
15

16 Section 1. Section 489.145, Florida Statutes, is amended
17 to read:

18 489.145 Guaranteed ~~energy~~ performance savings
19 contracting.--

20 (1) SHORT TITLE.--This section may be cited as the
21 "Guaranteed ~~Energy~~ Performance Savings Contracting Act."

22 (2) LEGISLATIVE FINDINGS.--The Legislature finds that
23 investment in energy, water, and wastewater efficiency or
24 conservation measures in agency facilities can reduce the amount
25 of energy and water consumed and wastewater to be treated and
26 produce immediate and long-term savings. It is the policy of
27 this state to encourage each agency ~~agencies~~ to invest in
28 energy, water, and wastewater efficiency or conservation

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29 measures that provide such reductions ~~reduce energy consumption~~,
30 produce a cost savings for the agency, and, for energy measures,
31 improve the quality of indoor air in public facilities and to
32 operate, maintain, and, when economically feasible, build or
33 renovate existing agency facilities in such a manner as to
34 minimize energy and water consumption and wastewater production
35 and maximize energy, water, and wastewater savings. It is
36 further the policy of this state to encourage each agency
37 ~~agencies~~ to reinvest any ~~energy~~ savings resulting from energy,
38 water, and wastewater efficiency or conservation measures in
39 additional energy, water, and wastewater efficiency or
40 conservation measures ~~efforts~~.

41 (3) DEFINITIONS.--As used in this section, the term:

42 (a) "Agency" means the state, a municipality, or a
43 political subdivision.

44 (b) "Energy, water, or wastewater efficiency or
45 conservation measure" means a training program, facility
46 alteration, or equipment purchase to be used in new facilities
47 or in retrofitting or adding to existing facilities or
48 infrastructure that ~~new construction, including an addition to~~
49 ~~an existing facility, which~~ reduces energy, water, wastewater,
50 or operating costs and includes, but is not limited to:

51 1. Insulation of the facility structure and systems within
52 the facility.

53 2. Storm windows and doors, caulking or weatherstripping,
54 multiglazed windows and doors, heat-absorbing, or heat-
55 reflective, glazed and coated window and door systems,
56 additional glazing, reductions in glass area, and other window

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57 and door system modifications that reduce energy consumption.

58 3. Automatic energy control systems.

59 4. Heating, ventilating, or air-conditioning system
60 modifications or replacements.

61 5. Replacement or modifications of lighting fixtures to
62 increase the energy efficiency of the lighting system, which, at
63 a minimum, must conform to the applicable state or local
64 building code.

65 6. Energy recovery systems.

66 7. Cogeneration systems that produce steam or forms of
67 energy such as heat, as well as electricity, for use primarily
68 within a facility or complex of facilities.

69 8. Energy conservation measures that provide long-term
70 operating cost reductions or significantly reduce Btu consumed.

71 9. Renewable energy systems, such as solar, biomass, or
72 wind systems.

73 10. Devices that reduce water consumption or wastewater
74 ~~sewer~~ charges.

75 11. Equipment upgrades that improve the accuracy of
76 billable revenue-generating systems.

77 12. Automated electronic or remotely controlled systems or
78 measures that reduce direct personnel costs.

79 13. Such other energy, water, or wastewater efficiency or
80 conservation measures as may provide measurable operating cost
81 reductions or billable revenue increases.

82 14.11- Energy storage systems, such as fuel cells and
83 thermal storage.

84 15.12- Energy-generating ~~generating~~ technologies, such as

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85 | microturbines.

86 | 16. Cool roof coating.

87 | ~~17.13.~~ Any other repair, replacement, or upgrade of
88 | existing equipment.

89 | (c) "Energy, water, or wastewater cost savings" means a
90 | measured reduction in the cost of fuel, energy or water
91 | consumption, or wastewater production and stipulated improvement
92 | in the operation and maintenance created from the implementation
93 | of one or more energy, water, or wastewater efficiency or
94 | conservation measures when compared with an established baseline
95 | for the previous cost of fuel, energy or water consumption, or
96 | wastewater production and stipulated operation and maintenance.

97 | (d) "Guaranteed ~~energy~~ performance savings contract" means
98 | a contract for the evaluation, recommendation, and
99 | implementation of energy, water, or wastewater efficiency or
100 | conservation measures, which, at a minimum, shall include:

101 | 1. The design and installation of equipment to implement
102 | one or more of such measures and, if applicable, operation and
103 | maintenance of such measures.

104 | 2. The amount of any actual annual savings that meet or
105 | exceed total annual contract payments made by the agency for the
106 | contract.

107 | 3. The finance charges incurred by the agency over the
108 | life of the contract.

109 | (e) "Guaranteed ~~energy~~ performance savings contractor"
110 | means a person or business that is licensed under chapter 471,
111 | chapter 481, or this chapter~~7~~, and is experienced in the
112 | analysis, design, implementation, or installation of energy,

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113 | water, or wastewater efficiency or conservation measures through
114 | ~~energy~~ performance contracts.

115 | (4) PROCEDURES.--

116 | (a) An agency may enter into a guaranteed ~~energy~~
117 | performance savings contract with a guaranteed ~~energy~~
118 | performance savings contractor to significantly reduce energy,
119 | water, or wastewater or operating costs of an agency facility
120 | through one or more energy, water, or wastewater efficiency or
121 | conservation measures.

122 | (b) Before design and installation of energy, water, or
123 | wastewater efficiency and conservation measures, the agency must
124 | obtain from a guaranteed ~~energy~~ performance savings contractor a
125 | report that summarizes the costs associated with the ~~energy~~
126 | ~~conservation~~ measures and provides an estimate of the amount of
127 | the associated ~~energy~~ cost savings or operational improvements.
128 | The agency and the guaranteed ~~energy~~ performance savings
129 | contractor may enter into a separate agreement to pay for costs
130 | associated with the preparation and delivery of the report;
131 | however, payment to the contractor shall be contingent upon the
132 | report's projection of ~~energy~~ cost savings being equal to or
133 | greater than the total projected costs of the design and
134 | installation of the report's ~~energy~~ conservation or efficiency
135 | measures.

136 | (c) The agency may enter into a guaranteed ~~energy~~
137 | performance savings contract with a guaranteed ~~energy~~
138 | performance savings contractor if the agency finds that the
139 | amount the agency would spend on the ~~energy~~ conservation or
140 | efficiency measures will not likely exceed the amount of the

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141 associated ~~energy~~ cost savings for up to 20 years from the date
142 of installation, based on the life cycle cost calculations
143 provided in s. 255.255, if the recommendations in the report
144 were followed and if the qualified provider or providers give a
145 written guarantee that such ~~the energy~~ cost savings will meet or
146 exceed the costs of the system. The contract may provide for
147 installment payments for a period not to exceed 20 years.

148 (d) A guaranteed ~~energy~~ performance savings contractor
149 must be selected in compliance with s. 287.055; except that if
150 fewer than three firms are qualified to perform the required
151 services, the requirement for agency selection of three firms,
152 as provided in s. 287.055(4)(b), and the bid requirements of s.
153 287.057 do not apply.

154 (e) Before entering into a guaranteed ~~energy~~ performance
155 savings contract, an agency must provide published notice of the
156 meeting in which it proposes to award the contract, the names of
157 the parties to the proposed contract, and the contract's
158 purpose.

159 (f) A guaranteed ~~energy~~ performance savings contract may
160 provide for financing, including tax-exempt ~~tax-exempt~~
161 financing, by a third party. The contract for third-party ~~third~~
162 ~~party~~ financing may be separate from the ~~energy~~ performance
163 savings contract. A separate contract for third-party ~~third~~
164 ~~party~~ financing must include a provision that the third-party
165 ~~third-party~~ financier must not be granted rights or privileges
166 that exceed the rights and privileges available to the
167 guaranteed ~~energy~~ performance savings contractor.

168 (g) In determining the amount the agency will finance to

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169 acquire the efficiency or ~~energy~~ conservation measures, the
170 agency may reduce such amount by the application of any grant
171 moneys, rebates, or capital funding available to the agency for
172 the purpose of buying down the cost of the guaranteed ~~energy~~
173 performance savings contract. However, in calculating the life
174 cycle cost as required in paragraph (c), the agency shall not
175 apply any grants, rebates, or capital funding.

176 (5) CONTRACT PROVISIONS.--

177 (a) A guaranteed ~~energy~~ performance savings contract must
178 include a written guarantee that may include, but is not limited
179 to the form of, a letter of credit, insurance policy, or
180 corporate guarantee by the guaranteed ~~energy~~ performance savings
181 contractor that annual associated ~~energy~~ cost savings will meet
182 or exceed the amortized cost of the efficiency or ~~energy~~
183 conservation measures.

184 (b) The guaranteed ~~energy~~ performance savings contract
185 must provide that all payments, except obligations on
186 termination of the contract before its expiration, may be made
187 over time, but not to exceed 20 years from the date of complete
188 installation and acceptance by the agency, and that the annual
189 savings are guaranteed to the extent necessary to make annual
190 payments to satisfy the guaranteed ~~energy~~ performance savings
191 contract.

192 (c) The guaranteed ~~energy~~ performance savings contract
193 must require that the guaranteed ~~energy~~ performance savings
194 contractor to whom the contract is awarded provide a 100-percent
195 public construction bond to the agency for its faithful
196 performance, as required by s. 255.05.

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197 (d) The guaranteed ~~energy~~ performance savings contract may
198 contain a provision allocating to the parties to the contract
199 any annual associated ~~energy~~ cost savings that exceed the amount
200 of the associated ~~energy~~ cost savings guaranteed in the
201 contract.

202 (e) The guaranteed ~~energy~~ performance savings contract
203 shall require the guaranteed ~~energy~~ performance savings
204 contractor to provide to the agency an annual reconciliation of
205 the guaranteed associated ~~energy~~ cost savings. If the
206 reconciliation reveals a shortfall in such annual ~~energy~~ cost
207 savings, the guaranteed ~~energy~~ performance savings contractor is
208 liable for such shortfall. If the reconciliation reveals an
209 excess in such annual ~~energy~~ cost savings, the excess savings
210 may be allocated under paragraph (d) but may not be used to
211 cover potential ~~energy~~ cost savings shortages in subsequent
212 contract years.

213 (f) The guaranteed ~~energy~~ performance savings contract
214 must provide for payments of not less than one-twentieth of the
215 price to be paid within 2 years from the date of the complete
216 installation and acceptance by the agency, and the remaining
217 costs to be paid at least quarterly, not to exceed a 20-year
218 term, based on life cycle cost calculations.

219 (g) The guaranteed ~~energy~~ performance savings contract may
220 extend beyond the fiscal year in which it becomes effective;
221 however, the term of any contract expires at the end of each
222 fiscal year and may be automatically renewed annually for up to
223 20 years, subject to the agency making sufficient annual
224 appropriations based upon continued realized energy, water, or

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225 wastewater savings.

226 (h) The guaranteed ~~energy~~ performance savings contract
227 must stipulate that it does not constitute a debt, liability, or
228 obligation of the state.

229 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The
230 Department of Management Services, with the assistance of the
231 Office of the Chief Financial Officer, may, within available
232 resources, provide technical assistance to state agencies
233 contracting for energy, water, or wastewater efficiency or
234 conservation measures and engage in other activities considered
235 appropriate by the department for promoting and facilitating
236 guaranteed ~~energy~~ performance contracting by state agencies. The
237 Office of the Chief Financial Officer, with the assistance of
238 the Department of Management Services, may, within available
239 resources, develop model contractual and related documents for
240 use by state agencies. Prior to entering into a guaranteed
241 ~~energy~~ performance savings contract, any contract or lease for
242 third-party financing, or any combination of such contracts, a
243 state agency shall submit such proposed contract or lease to the
244 Office of the Chief Financial Officer for review and approval.

245 Section 2. Subsection (10) of section 287.064, Florida
246 Statutes, is amended to read:

247 287.064 Consolidated financing of deferred-payment
248 purchases.--

249 (10) Costs incurred pursuant to a guaranteed ~~energy~~
250 performance savings contract, including the cost of energy,
251 water, or wastewater efficiency and conservation measures, each
252 as defined in s. 489.145, may be financed pursuant to a master

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253 equipment financing agreement; however, the costs of training,
254 operation, and maintenance may not be financed. The period of
255 time for repayment of the funds drawn pursuant to the master
256 equipment financing agreement under this subsection may exceed 5
257 years but may not exceed 10 years.

258 Section 3. This act shall take effect July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—HB 399 would require the Department of Management Services to adopt rules that specify the criteria to be used when considering life-cycle costing in evaluating bids, proposals, or replies as well as rules for the implementation of environmentally preferable cleaning product procurement, including a uniform reporting mechanism.

B. EFFECT OF PROPOSED CHANGES:

Current situation

The Division of State Purchasing ("State Purchasing") within the Department of Management Services

State Purchasing establishes state term contracts from which agencies and other eligible users make purchases of commodities and services. However, no state term contract is currently in place for cleaning supplies, primarily because the Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE) inmate work program produces a comprehensive array of cleaning products for use by State agencies which are deemed preferred by s. 946.515 (2), F.S. In 2003, State Purchasing solicited for vendors to provide for 125 different products, most of which would classify as cleaning products. No vendors responded to the solicitations. As a result, products not provided by PRIDE are acquired through direct contracting between agencies and vendors or through alternative source contracting.

The Division of Real Estate development and Management within the Department of Management Services

The Division of Real Estate Development and Management serves as the managing agency for the state-owned Florida Facilities Pool properties. Managed under the requirements mandated by chapter's 255 and 272, F.S., these properties consist of 21 regional facilities and 35 Tallahassee facilities, which comprises the 7.8 million, gross square feet in the Florida Facilities Pool. To fulfill the requirements of managing the state-owned properties the Division of Real Estate Development and Management utilizes private providers such services as construction, professional design, materials, supplies, equipment to perform alterations, repairs, improvements and new construction to develop and maintain the properties in accordance with the bond covenant. This includes the purchase and use of cleaning products. Of the space managed by the Division of Real Estate Development and Management 75% of custodial services is contract with a private provider that manages their own purchase of cleaning products.

The Division of Real Estate Development and Management additionally provides Project Management Oversight services for construction projects appropriated as Department of Management Services managed projects as well as for other state agencies through Client Agency Agreements. This also includes the purchase and use of cleaning products by the private providers of construction services. The Department of Management Services manages buildings within the Florida Facilities Pool, but does not manage all state-owned buildings. The State Facilities Inventory 2006 annual reports covers 3,867 buildings, which consist of 56 million gross square feet and are managed by 21 different state agencies. This inventory does not include buildings less than 3,000 square feet or the state's university facilities.

The Division of Real Estate Development and Management is not staffed with certified professionals to assess and rank environmentally preferable cleaning products based on class or classes of cleaning chemicals.

Proposed change

Review and Revisions of Procedures and Specifications

HB 399 requires the Department of Management Services ("the department"), in cooperation with the Department of Environmental Protection, and each agency to review and revise its statewide procurement procedures and specifications for the purchase of cleaning products in order to:

- Eliminate any procedures and specifications that explicitly discriminate against cleaning products that are environmentally preferable.¹ An exception is provided for procedures and specifications that are necessary to protect the public health, safety, and welfare.
- Determine which environmentally preferable cleaning products could be procured.
- Ensure, to the maximum extent feasible, that each agency uses state contracts to purchase environmentally preferable cleaning products.
- Identify the lowest responsible and responsive vendor and other responsible and responsive vendors who have certified that the products are environmentally preferable as set forth in the solicitation.
- Encourage the use of environmentally preferable cleaning products.

Implementation Requirements

General requirements for implementation are as follows:

- Environmentally preferable cleaning products would be required where economically and technically feasible.
- Wasting of existing inventories of cleaning products would be avoided.
- Accommodate establishment of available vendors and products.
- Training of personnel in appropriate work practices.
- Allow for the phase-out of products and practices inconsistent with the provisions of this section of the statutes.
- Reference to the guidelines for environmentally preferable purchasing set forth by the United States Environmental Protection Agency.²
- Consideration of life-cycle costing when evaluating a bid, proposal, or reply on environmentally preferable cleaning products.
- If no vendor offers environmentally preferable cleaning products with measurable life-cycle costing factors, the contract shall be awarded to the lowest bidding qualified responsible and responsive vendor.

An agency or their contracted vendor would be required to procure environmentally preferable cleaning products if the agency determines that those products are available. An agency's decision not to procure such items must be based on the determination criteria that such procurement is:

- not reasonably available within an acceptable period of time,
- fails to meet the performance standards set forth in the applicable specifications, or
- fails to meet the performance standards of the agency.

Certification

A person who submits a bid, proposal, or reply for a contract for the purchase of cleaning products must certify in writing whether the cleaning product subject to the bid, proposal, or reply is an environmentally preferable cleaning product. A person may also certify that the product is not an environmentally preferable cleaning product.

Audit Requirements

The Auditor General is required to assist in monitoring the product procurement requirements.

¹ "Environmentally preferable cleaning products" means cleaning products that have a lesser or reduced effect on human health and the environment than competing cleaning products that serve the same purpose.

² <http://www.epa.gov/opptintr/epp/pubs/guidance/finalguidancetoc.htm>

Rule Making Authority

The department would be required to adopt rules that specify the criteria to be used when considering life-cycle costing in evaluating bids, proposals, or replies. The department would also be required to establish rules for the implementation of environmentally preferable cleaning product procurement, including a uniform reporting mechanism and price preferences.

Provider Preferences

1. The department or an agency may allow up to a 10-percent price preference to a "responsible and responsive" vendor who has certified that the products are environmentally preferable.
2. An additional price preference of up to 5 percent may be allowed if the vendor is also domiciled in the state.

HB 399 would require the amount of the price preference to be commensurate with the life-cycle of the products, including raw material acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or final disposal of the products on a sliding scale as established by Department of Management Service rule.

Product Qualification

Any person may request the department to evaluate a cleaning product to determine if the product is eligible for inclusion under state contracts. The department would be required to review each reasonable proposal to determine its merit and, if it finds that the product is environmentally preferable, it may incorporate that product into its procurement procedures.

Reporting Requirements

Each agency would be required to report annually to the department its total expenditures and use of environmentally preferable cleaning products. In turn, the department would be required to prepare annual summaries of statewide environmentally preferable purchases to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

C. SECTION DIRECTORY:

Section 1. Creates s. 287.048, F.S., requiring the Department of Management Services, in cooperation with the Department of Environmental Protection, and each agency to review and revise the statewide procurement procedure and specifications for the purchase of environmentally preferable cleaning products.

Section 2. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Division of Real Estate Development and Management, HB 399 would involve establishing specifications, rule promulgation, audits, preference determination, product assessment eligibility and tracking and reporting purchases by the Department of Management Services as well as each state agency. No funding source or FTE have been identified to perform these new tasks. The tasks identified would require the services of more than one program area within the Department of Management Services as well as the Department of Environmental Protection.

This proposed legislation provides for preference purchasing based on certified environmentally preferable products as well as if the provider is domiciled in the state. This preference is based on self-certification of products by the providers. These price preferences can add up to a 15 percent increased cost based on 10 percent for qualified product and 5 percent for a Florida owned business. A Florida owned business is not defined as to if it is the manufacturer or product supplier or both.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

HB 399 requires the Department of Management Services ("the department") to adopt rules that specify the criteria to be used when considering life-cycle costing in evaluating bids, proposals, or replies. The bill also requires the department to establish rules for the implementation of environmentally preferable cleaning product procurement, including a uniform reporting mechanism.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There may be a statutory conflict between HB 399 and section 946. Section 946.515 (2), F.S., requires state agencies to purchase from the Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE) when a PRIDE commodity meets the comparable performance specifications and comparable price and quality requirements. PRIDE produces a comprehensive array of cleaning products and contends that its cleaning products are "environmentally preferable."

Section 946.515 (4), F.S., provides that part I of chapter 287 (which would include HB 399) does not apply to any purchases of commodities or contractual services made by any legislative, executive, or judicial agency.

_____ OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

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1 A bill to be entitled
2 An act relating to procurement of environmentally
3 preferable cleaning products; creating s. 287.048, F.S.;
4 providing definitions; directing the Department of
5 Management Services, in cooperation with the Department of
6 Environmental Protection, to review and revise the
7 statewide procurement procedure and specifications for the
8 purchase of cleaning products; directing each state agency
9 to review and revise procurement procedures and
10 specifications for the purchase of cleaning products;
11 specifying requirements for such review and revision;
12 requiring each agency to make a determination for the
13 procurement of environmentally preferable cleaning
14 products; requiring the Auditor General to assist in
15 monitoring the product procurement requirements; providing
16 requirements for contract solicitation; providing
17 requirements for submission of bids, proposals, and
18 replies; providing requirements for evaluation of bids,
19 proposals, and replies; authorizing the Department of
20 Management Services to adopt rules specifying the criteria
21 for such evaluations; authorizing price preference in
22 contract awards for vendors who offer certified
23 environmentally preferable cleaning products and who are
24 domiciled in the state; requiring the department to
25 establish rules for price preferences; requiring the
26 department to evaluate proposed environmentally preferable
27 products for inclusion in procurement procedures;
28 requiring each agency to purchase environmentally

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29 preferable cleaning products if available and meeting
30 certain criteria; providing for the procurement of
31 nonenvironmentally preferable cleaning products under
32 certain circumstances; requiring the department to
33 establish rules for the implementation of environmentally
34 preferable cleaning product procurement; requiring each
35 agency to submit an annual report to the department;
36 providing report requirements; requiring the department to
37 prepare annual summaries and submit a report to the
38 Governor and the Legislature; providing an effective date.

39
40 Be It Enacted by the Legislature of the State of Florida:

41
42 Section 1. Section 287.048, Florida Statutes, is created
43 to read:

44 287.048 Procurement of environmentally preferable cleaning
45 products.--

46 (1) For the purposes of this section, the term
47 "environmentally preferable cleaning products" means cleaning
48 products that have a lesser or reduced effect on human health
49 and the environment than competing cleaning products that serve
50 the same purpose.

51 (2)(a) The department, in cooperation with the Department
52 of Environmental Protection, shall review and revise statewide
53 procurement procedures and specifications for the purchase of
54 cleaning products to eliminate any procedures and specifications
55 that explicitly discriminate against cleaning products that are
56 environmentally preferable, unless such procedures and

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57 specifications are necessary to protect the public health,
58 safety, and welfare.

59 (b) Each agency shall review and revise its procurement
60 procedures and specifications for the purchase of cleaning
61 products to eliminate any procedures and specifications that
62 explicitly discriminate against cleaning products that are
63 environmentally preferable, unless such procedures and
64 specifications are necessary to protect the public health,
65 safety, and welfare.

66 (3) (a) The department and each agency shall review its
67 procurement provisions and specifications for the purchase of
68 cleaning products to determine which environmentally preferable
69 cleaning products could be procured by the department and
70 agencies. In making such determination, the department and each
71 agency shall refer to the guidelines for environmentally
72 preferable purchasing set forth by the United States
73 Environmental Protection Agency.

74 (b) The department and each state agency shall review and
75 revise its procurement procedures and specifications for the
76 purchase of cleaning products to ensure, to the maximum extent
77 feasible, that each agency uses state contracts to purchase
78 environmentally preferable cleaning products. Such review and
79 revision shall include an implementation measure that avoids
80 wasting of existing inventories, accommodates establishment of
81 available vendors and products, enables training of personnel in
82 appropriate work practices, and allows the phase-out of products
83 and practices inconsistent with the provisions of this section.

84 (c) The Auditor General shall assist in monitoring the

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85 product procurement requirements.

86 (4) (a) Upon completion of the review required in
87 subsection (3), the department and each agency shall require
88 that a person who submits a bid, proposal, or reply for a
89 contract for the purchase of cleaning products must certify in
90 writing whether the cleaning product subject to the bid,
91 proposal, or reply is an environmentally preferable cleaning
92 product. A person may certify that the product is not
93 environmentally preferable.

94 (b) Upon evaluation of bids, proposals, or replies for
95 each public contract that involves the purchase of products
96 identified in subsection (3), the department or agency shall
97 identify the lowest responsible and responsive vendor and other
98 responsible and responsive vendors who have certified that the
99 products are environmentally preferable as set forth in the
100 solicitation.

101 (c) The department or agency may consider life-cycle
102 costing when evaluating a bid, proposal, or reply on
103 environmentally preferable cleaning products. The department
104 shall adopt rules that specify the criteria to be used when
105 considering life-cycle costing in evaluating bids, proposals, or
106 replies.

107 (5) (a) In awarding a contract for the purchase of
108 environmentally preferable cleaning products, the department or
109 agency may allow up to a 10-percent price preference to a
110 responsible and responsive vendor who has certified that the
111 products are environmentally preferable. An additional price
112 preference of up to 5 percent may be allowed if the vendor is

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113 also domiciled in the state. The amount of the price preference
114 shall be commensurate with the life cycle of the products,
115 including raw material acquisition, production, manufacturing,
116 packaging, distribution, reuse, operation, maintenance, or final
117 disposal of the products on a sliding scale as established by
118 department rule.

119 (b) Environmentally preferable cleaning products shall be
120 used where economically and technically feasible. If no vendor
121 offers environmentally preferable cleaning products with
122 measurable life-cycle costing factors, the contract shall be
123 awarded to the lowest bidding qualified responsible and
124 responsive vendor.

125 (6) Any person may request the department to evaluate a
126 cleaning product to determine if the product is eligible for
127 inclusion under state contracts. The department shall review
128 each reasonable proposal to determine its merit and, if it finds
129 that the product is environmentally preferable, it may
130 incorporate that product into its procurement procedures.

131 (7) The department and each agency shall review and revise
132 its procedures and specifications on a continuing basis to
133 encourage the use of environmentally preferable cleaning
134 products and shall, in developing new procedures and
135 specifications, encourage the use of environmentally preferable
136 cleaning products.

137 (8) An agency, or a vendor contracting with such agency
138 with respect to work performed under contract, must procure
139 environmentally preferable cleaning products if the department
140 determines that those products are available pursuant to

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141 subsection (3). A decision not to procure such items must be
142 based on the department's determination that such procurement is
143 not reasonably available within an acceptable period of time or
144 fails to meet the performance standards set forth in the
145 applicable specifications or fails to meet the performance
146 standards of the agency.

147 (9) The department shall establish rules for the
148 implementation of environmentally preferable cleaning product
149 procurement, including a uniform reporting mechanism. Each
150 agency shall report annually to the department its total
151 expenditures on, and use of, environmentally preferable cleaning
152 products. The department shall prepare annual summaries of
153 statewide environmentally preferable purchases to be submitted
154 to the Governor, the President of the Senate, and the Speaker of
155 the House of Representatives.

156 Section 2. This act shall take effect July 1, 2007.